MAYBAN FACTORING BHD

v.

KOPERASI PEKERJA-PEKERJA JABATAN PERDANA MENTERI MALAYSIA BHD

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
ABDUL HAMID MOHAMAD JCA
ABDUL KADIR SULAIMAN JCA
[CIVIL APPEAL NO: W-02-447-96]
3 AUGUST 2001

AGENCY: *Authority of agent - Acting in excess - Secretary of company entered into transaction without informing company - Whether company liable for transaction thereto - Whether secretary had ostensible authority to act on its behalf - Contracts Act 1950, s. 191*

CIVIL LAW ACT: *Assignment - Debts due to assignor assigned to assignee - Whether enforceable against debtor - Whether an absolute assignment - Civil Law Act 1956, s. 4(3)*

One Mohd Mukhtar Muda trading as Mejamok Enterprise ('Mejamok') and the appellant entered into a factoring agreement wherein the appellant was assigned seven invoices involving a purported purchase of mineral pots by the respondent from Mejamok. The respondent neglected to settle the amount due under the said invoices as a result of which the appellant commenced this action against the respondent. In its defence, the respondent denied the appellant's claim that it was involved in the transaction relating to the invoices. Also, that it had no notice of the factoring arrangement the appellant had with Mejamok. The issue of fraud was also raised. The trial judge dismissed the appellant's claim on the basis that the respondent being a co-operative established under the Cooperative Act 1948, its secretary who had dealt with Mejamok in relation to the said transaction was not authorised to purchase the said goods on its behalf. Hence, this appeal.

Held:
Per Abdul Kadir Sulaiman JCA

[1] The secretary of the respondent was not an ordinary person. He was a member of the respondent's board of directors and was also authorised to receive all documents meant for the respondent. He had acknowledged and given consent to the factoring arrangement between Mejamok and the appellant on behalf of the respondent. Hence, knowledge of the factoring

arrangement. He had also acknowledged receipt of all the items mentioned in the respective invoices meant for the respondent. In all those instances, it could not be denied that he was acting on behalf of the respondent. The fact that he did not inform the respondent of the transactions was not the concern of the appellant, it being an internal matter.

[2] Mejamok was not a total stranger to the respondent as the respondent had admitted that it had had previous dealings with the respondent as its appointed agent in the supply of mineral pots. If at all there was any representation made, or fraud committed by the secretary acting in the course of the respondent's business, the conduct was imputed to the respondent under s. 191 of the Contracts Act 1950. The respondent could not escape liability to the appellant, an innocent party, in respect of the debts which arose out of the factoring agreement made with notice despite it not being communicated to it by its authorised agent. The appellant was entitled to rely on the ostensible authority of the secretary to act on the respondent's behalf.

[3] The assignment of debts due from the respondent to Mejamok was an absolute assignment under s. 4(3) of the Civil Law Act 1956 and was enforceable by the appellant against the respondent. The learned judge had erred in dismissing the appellant's claim.

[Decision of trial judge set aside; judgment entered for appellant.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Seorang bernama Mohd Mukhtar Muda yang berniaga sebagai Mejamok Enterprise ('Mejamok') dan perayu telah memasuki satu perjanjian pemfaktoran di mana perayu telah diserahhak tujuh invois yang dikatakan membabitkan pembelian "mineral pots" oleh responden daripada Mejamok. Responden abai untuk menjelaskan jumlah yang kena dibayar di bawah invois-invois tersebut yang mana telah menyebabkan perayu memulakan tindakan ini terhadap responden. Dalam pembelaannya, responden menafikan tuntutan perayu bahawa ianya terbabit di dalam transaksi berhubung dengan invois-invois tersebut. Juga, ianya tidak mempunyai sebarang notis mengenai persetujuan pemfaktoran yang dimasuki oleh perayu dengan Mejamok. Isu mengenai fraud telah juga dibangkitkan. Hakim perbicaraan telah menolak tuntutan perayu atas sebab bahawa responden sebagai sebuah koperasi yang ditubuhkan di bawah Akta Koperasi 1948, setiausahanya yang telah berurusan dengan Mejamok berhubung transaksi tersebut tidak diberi kuasa untuk membeli barangan tersebut bagi pihaknya. Perayu merayu.

Diputuskan:
Oleh Abdul Kadir Sulaiman HMR

[1] Setiausaha responden bukannya orang biasa. Beliau adalah seorang ahli lembaga pengarah responden dan telah juga diberi kuasa untuk menerima kesemua dokumen yang dimaksudkan untuk responden. Beliau telah mengesahkan dan memberi kebenaran kepada persetujuan pemfaktoran antara Mejamok dan perayu bagi pihak responden. Dengan itu, mengetahui mengenai persetujuan pemfaktoran tersebut. Beliau juga mengakui penerimaan kesemua perkara yang disebut di dalam invois masing-masing yang ditujukan bagi responden. Dalam kesemua keadaan itu, adalah tidak boleh dinafikan bahawa beliau bertindak bagi pihak responden. Hakikat bahawa beliau tidak memaklumkan responden mengenai transaksi tersebut bukan merupakan suatu hal bagi perayu, kerana ianya adalah perkara dalaman.

[2] Mejamok bukannya pihak yang tidak dikenali sama sekali oleh responden kerana responden telah mengakui bahawa ia pernah dahulunya mempunyai urusan-urusan dengan responden sebagai ejennya yang dilantik untuk pembekalan "mineral pots". Jika sekalipun terdapat sebarang representasi yang dibuat, atau fraud yang dilakukan oleh setiausaha tersebut yang bertindak dalam perjalanan perniagaan responden, perlakuan tersebut telah dikaitkan dengan responden di bawah s. 191 Akta Kontrak 1950. Dalam keadaan tersebut, responden tidak boleh lari dari tanggungan kepada perayu, pihak yang tidak bersalah, berhubung dengan hutang yang berbangkit dari persetujuan pemfaktoran yang telah dibuat dengan notis meskipun ianya tidak dimaklumkan kepadanya oleh ejennya yang sah. Perayu berhak untuk bergantung pada kuasa setiausaha kononnya untuk bertindak bagi pihak responden.

[3] Penyerahhakan hutang yang kena dibayar oleh responden kepada Mejamok merupakan satu penyerahhakan yang mutlak di bawah s. 4(3) Akta Undang-Undang Sivil 1956 dan boleh dkuatkuasakan oleh perayu terhadap responden. Oleh yang demikian, hakim yang bijaksana telah salah dalam menolak tuntutan perayu.

[Keputusan hakim perbicaraan diketepikan; penghakiman dimasukkan untuk perayu.]

Case(s) referred to:
Mahesan v. Malaysian Government Officers Co-operative Housing Society Ltd [1975] 1 MLJ 77 ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 4(3)
Contracts Act 1950, s. 191

For the appellant - Simon Hue Fook Chuan; M/s Ringo Low & Simon Hue
For the respondent - Jeyakumar Palakrishnar; M/s Zahir Jeya & Zinal

Reported by Usha Thiagarajah

JUDGMENT

Abdul Kadir Sulaiman JCA:
One Mohd. Mukhtar bin Muda @ Abu Bakar trading as Mejamok Enterprise (hereinafter referred to as "Mejamok") at the material time was the appointed supplier of mineral pots to the respondent. Mejamok issued a total of seven invoices involving the purported purchase by the respondent of various mineral pots to a total value of RM390,964.

At the request of Mejamok, the appellant on 14 June 1991 approved factoring facilities to it to include the amount covered by the said seven invoices. By a letter dated 15 June 1991 Mejamok gave notice to the respondent, as follows:

> Setiausaha
> Koperasi Pekerja-Pekerja
> Jabatan Perdana Menteri Malaysia Berhad
> KUALA LUMPUR
>
> Dear Sirs,
>
> FACTORING – MAYBAN FACTORING BERHAD
>
> In order to help with our expansion plans we have agreed to factor our invoices with MAYBAN FACTORING BERHAD (hereinafter known as, 'MFB'). Our aim in so doing is to benefit from their expertise in looking after our sales accounting and in addition, to have access to further funds when required. The new arrangement will relieve us to devote all our efforts to providing you with the highest level of service.
>
> Please note that all present and future receivables, have and will be factored to MFB and all future invoices will bear a notice of such factoring to them. Because of this transfer of title, it is necessary for you to make all payments direct to:

MAYBAN FACTORING BERHAD
32nd Floor, Menara Maybank
100 Jalan Tun Perak
50050 Kuala Lumpur
Peti Surat 11560
50750 Kuala Lumpur

Tel Nos : (03)-238-5130
Fax No : (03)-238-5134

In order to obtain a valid discharge of your debts statements will be rendered from time to time by MFB who will be pleased to answer any query on your account; however, your lines to us, of course, remain open. One further point arising from the purchase by MAYBAN FACTORING BERHAD of our debts, is that, set-offs and contra arrangements cannot now be made and all invoices should be settled gross.

Please pay and continue to pay to MFB all receivables even though the invoices may not carry the notice previously mentioned until you are notified in writing to the contrary by MFB.

Kindly confirm your acceptance of the above arrangement by signing and returning the confirmation slip attached, to MFB at the address stated above.

Thanking you in anticipation of your cooperation.

Yours faithfully,

...
Pengarah Urusan
MEJAMOK ENTERPRISE

c.c. MAYBAN FACTORING BERHAD.

The respondent entered its acknowledgement at the bottom of the copy of the said letter in the following term:

TO : MAYBAN FACTORING BERHAD

I/We acknowledge and consent to the above factoring arrangement and expressly agree to make direct payments to you and abide by the terms and conditions set out above.

... 15 Jun 1991
Date

Name: (MOHD NASIR B. ZABIDIN)

Designation: Setiausaha
KOPERASI PEKERJA-PEKERJA
JABATAN PERDANA MENTERI
MALAYSIA BERHAD

Tel. No: 2923144.

It is to be noted that the dealings Mejamok had with the respondent relating to the matter covered by the invoices was through the then secretary cum director of the respondent who was authorised to attend to all daily correspondence involving the respondent.

On 17 June 1991 a formal factoring agreement was entered into between Mejamok and the appellant concerning the assignment of its existing and future invoices to the appellant. Following that Mejamok assigned with the appellant the following seven invoices affecting the respondent all dated 16 May 1991 involving the supply of various types of Mineral Pots:

References	Value
(a) MP/4M/91/1772	RM53,086
(b) MP/4M/91/1773	RM91,104
(c) MP/4M/91/1774	RM28,618
(d) MP/4M/91/1775	RM79,940
(e) MP/4M/91/1776	RM39,480
(f) MP/4M/91/1777	RM60,326
(g) MP/4M/91/1778	RM38,410
Total	RM390,964

On each of the invoices there was an acknowledgment by the secretary of the respondent as to the receipt of the various items mentioned therein. Also on each was a notice of the factoring by the appellant of the account of Mejamok and a notice to the effect that any returns or objections to the account or its terms must be reported to the appellant within 14 days after the receipt or else the account shall be deemed to be conclusive and binding on the respondent.

As events turned out, the respondent neglected to settle the amount due under the said invoices to the appellant despite demand made. So, on 26 December 1991, the appellant caused a writ to be issued in the High Court against Mejamok (for the balance of the factoring facilities offered by the appellant to it), against Norisah bte Ghazali (as a guarantor of the facilities), and against the respondent in the sum of RM390,96, being the amount factored through the above invoices, as mentioned earlier, interest and costs.

By its statement of defence, the respondent denied the claim of the appellant averring that it was not involved in the transaction relating to the invoices and received no notice of the factoring arrangement the appellant had with Mejamok. It is further averred that the then secretary of the respondent had admitted that he had signed several blank forms and had witnessed the falsification of the respondent's papers by a third party including the forging of the signature of the chairman thereby committing a fraud upon the appellant and the respondent.

The matter went for a hearing before the learned judge in the High Court. SP1, the appellant's Executive Officer (Operation) gave evidence, *inter alia*, that on 15 June 1991 he went over to meet the secretary of the respondent who confirmed that the seven invoices were genuine and that the goods had been supplied and payments would be made by the respondent direct to the appellant within 90 days from the date stated on the invoices. The witness also testified that monthly statements of the debts incurred by virtue of the seven invoices were regularly sent to the respondent but no objection as to their accuracies was received from the respondent in respect of each of the items in the statements. Mejamok had accordingly been paid the total amount of RM390,96 mentioned in the seven invoices.

For the respondent, one of the witnesses was its chairman who gave evidence to the effect that any purchase of material must have the prior sanction of its Loan Committee which in respect of the said seven invoices no record of such sanction has ever been given. The witness, however, admitted that the respondent has had previous dealings albeit occasionally with Mejamok who was its appointed agent for the supply to it of mineral pots.

On the whole of the evidence before him, the learned judge identified two issues in order to resolve the dispute between the appellant and the respondent. Firstly, was there a lawful debt due from the respondent to Mejamok. Secondly, if there was such a lawful debt, was the debt properly assigned to the appellant by Mejamok pursuant to the terms and conditions stipulated in the factoring agreement. He found that Mejamok did not deliver the said mineral pots to the respondent and as such there was no lawful debt due from the respondent to Mejamok which the latter could assign to the appellant

pursuant to the factoring agreement. The respondent being a cooperative established under the Cooperative Act 1948, its secretary was not its employee authorised to purchase the subject goods mentioned in the invoices. As such Mejamok had not delivered the goods to the respondent in order to commit the latter with any lawful debt. Such being the case, there was nothing that Mejamok could lawfully assign to the appellant. On the question of notice of the assignment being given to the respondent either through the letter of 15 June 1991 mentioned earlier or through the printed notice on the respective invoices, the learned judge on his holding that the secretary has no authority to act on behalf of the respondent, was of the view that such notices were ineffective for the reason that they were all addressed and received by the secretary who did not bring it to the attention of the respondent. However, surprising enough the learned judge in his judgment accepted that on the authority of *Mahesan v. Malaysian Government Officers Co-operative Housing Society Ltd* [1975] 1 MLJ 77 the secretary was at the material time the agent of the respondent. However, on the facts of the case, he held that the act of the secretary could not bind the respondent who had acted beyond his authority. For all those reasons, the learned judge dismissed the claim of the appellant with costs.

Being dissatisfied with the decision of the learned judge, the appellant appealed. We heard the appeal and on 11 June 2001 we delivered our oral decision unanimously allowing the appeal of the appellant with costs. We now provide our reason for doing so.

As the facts were not really in dispute, the only issue before us is whether the dealings had between Mejamok and the secretary of the respondent in matters relating to the seven invoices would bind the respondent thereby resulting in its liability to pay the amount stipulated therein in the sum of RM390,96 to the appellant by virtue of the factoring agreement dated 17 June 1991 entered into between the appellant and Mejamok, and the notice to the respondent of the factoring arrangement. There is no doubt that at the material time the secretary of the respondent was its agent as so found by the learned judge. However, before us the learned counsel for the respondent argues that by virtue of s. 191 of the Contracts Act 1950 the act and conduct of the secretary would not affect his principal, the respondent, as he was not empowered to deal with Mejamok on behalf of the respondent or otherwise for not informing the respondent of the dealings. Section 191 states:

> 191. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or fraud committed, by agents, in matters which do not fall within their authority, do not affect their principals.

We disagree with the line of submission by the learned counsel. The secretary on the evidence was not an ordinary person. Apart from being such he was also a member of the respondent's board of directors. He was also authorised to receive all documents meant for the respondents and indeed in this case, on behalf of the respondent, he acknowledged and gave consent to the factoring arrangement between Mejamok and the appellant. Hence the knowledge of the factoring arrangement. He also acknowledged the receipt of all the items mentioned in the respective invoices meant for the respondent. The seven invoices relate to seven separate orders duly made and certified by the secretary as evidenced in the following purchase orders:

Purchase Order No.	Date
(a) KOOPJPM/SU/110	8 April 1991
(b) KOOPJPMJSU/111	8 April 1991
(c) KOOPJPM/SU/112	8 April 1991
(d) KOOPJPM/SU/113	8 April 1991
(e) KOOPJPM/SU/114	8 April 1991
(f) KOOPJPM/SU/115	8 April 1991
(g) KOOPJPM/SU/116	8 April 1991

In all those instances, it cannot be denied that he was acting on behalf of the respondent. The fact that he did not inform the respondent of the transactions is not the concern of the appellant, it being an internal matter of the respondent. The respondent admitted that it has had dealings previously with Mejamok who was its appointed agent in the supply of mineral pots. Hence, Mejamok was not a total stranger to the respondent. If at all there was any misrepresentation made, or fraud committed by the secretary acting in the course of the respondent's business, under s. 191 of the Contracts Act 1950 the conduct is imputed on the respondent. In the circumstances, the respondent cannot escape the liability to the appellant, an innocent party, in respect of the debts which arose out of the factoring agreement made with notice though not communicated to it by its authorised agent. As stated earlier, the appellant is not concerned with the internal affairs involving the respondent and its secretary. At the very least, on the facts, the appellant was entitled to rely on the ostensible authority of the secretary to act on behalf of the respondent. As far as the appellant is concerned its right over the respondent was created by the factoring agreement, the notice of which was properly given to it. The assignment of the debts due from the respondent to Mejamok was an absolute

assignment under s. 4(3) of the Civil Law Act 1956 enforceable by the appellant against the respondent. Therefore, the learned judge has erred in dismissing the claim of the appellant. The decision of the learned judge was therefore set aside and judgment entered in favour of the appellant as claimed with costs here and below. The deposit paid is to be refunded to the appellant.